IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.164 OF 2005.

Shri Indrajit Genaba Shirke
and anr. : Appellants.

versus

Jagganath Krishna Shirke : Respondent.

Mr.M.D.Naik for the appellants.
Mr.P.B.Shah for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 7th July 2005.

ORAL ORDER

1. The grievance of the appellant is that when his appeal came up before the District Court, his advocate remained absent so also the appellant and, thereafter the District Court heard the respondent and dismissed the appeal on merits. That is not at all proper in view of the provisions of Order 41 Rule 17 of the C.P.C. The

Court is empowered to dismiss the appeal in the absence of appellant's advocate. If the appellant appears and the respondent does not appear, then the court can proceed exparte. But no provision could be shown by Mr.Shah under which the lower appellate Court was empowered to hear the respondent in the absence of the appellant's advocate or the appellant and decide the appeal on merits. Therefore, in view of this fact, this is a substantial question of law. The appeal is admitted and finally heard. The impugned order of dismissal of the appeal is set aside and the matter is remanded to the District Court, Satara. The parties to appear before the District Court Satara on 26th July 2005. Thereafter the District Court, Satara will decide the appeal on merits after hearing both the sides within two month. All questions raised before the lower appellate Court are kept open. Certified copy expedited.

[D.G.DESHPANDE]